Supreme Court of the United States

OCTOBER TERM, 1965

No. 759

ERNESTO A. MIRANDA, PETITIONER,

vs.

ARIZONA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

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[fol. A]

IN THE JUSTICE COURT
NORTHEAST PHOENIX PRECINCT,
COUNTY OF MARICOPA, STATE OF ARIZONA

No. 7435

STATE OF ARIZONA

vs.

ERNEST ARTHUR MIRANDA, DEFENDANT

CRIMINAL COMPLAINT—Filed March 14, 1963

Before me, CHARLES F. COPPOCK, a Justice of the Peace of NORTHEAST PHOENIX Precinct, in and for Maricopa County, State of Arizona, on this 14th day of March, A.D. 1963 personally appeared GLENN MARTIN who on oath deposes and says it is his information and belief that at NORTHEAST PHOENIX Precinct, Mari-

COUNT I:

copa County, State of Arizona, on or about the 3rd day of March, 1963, ERNEST ARTHUR MIRANDA did then and there commit a felony, to-wit: KIDNAPPING as follows, to-wit:

The said ERNEST ARTHUR MIRANDA on or about the 3rd day of March, 1963, and before the filing of this complaint at NORTHEAST PHOENIX Precinct, in the County of Maricopa, State of Arizona, did then and there wilfully, unlawfully and feloniously, seize, confine, abduct, conceal, kidnap or carry away one Patricia Ann Weir for the purpose of raping and did rape said Patricia Ann Weir, said Patricia Ann Weir not being related in any way to said defendant, ERNEST ARTHUR MIRANDA, all contrary to the provisions of sec. 13-492, (A). (C. 2.), A.R.S.

COUNT II: For a further and separate cause of action, being a different offense from, but connected in its commission with the charge set forth in Count I hereof,

[fol. D]

IN THE SUPERIOR COURT OF MARICOPA COUNTY, STATE OF ARIZONA

DIVISION NO. 3

MINUTE ENTRY ORDERING MENTAL EXAMINATION—May 20, 1963

* * * *

This matter has been under advisement: IT IS ORDERED appointing Dr. Leo Rubinow and Dr. James M. Kilgore, Jr. to make their examinations and render their reports under Criminal Rule 250.

* * * *

[fol. E]

PSYCHIATRIC REPORT OF DR. JAMES M. KILGORE, JR., M.D. —May 28, 1963

JAMES M. KILGORE, JR., M.D.
Suite 209
461 West Catalina Drive
Phoenix 13, Arizona

PSYCHIATRY

May 28, 1963

Honorable Warren L. McCarthy
Judge of the Superior Court
Maricopa County
Court House
Phoenix, Arizona

MIRANDE, Ernest Arthur
Criminal Cause #41947, #41948

Ernest Arthur Mirande is a 23-year-old Mexican male who was examined by me in the County Jail on May 26, 1963.

Mr. Mirande is charged with the offense of robbery in relation to one Barbara Sue McDaniel on November 27, 1962. Mr. Mirande states that on that evening approxi-

mately 9:30 p.m. he saw a lady go to her car in the parking lot alone. He approached the car and got in the front seat. He stated at the time that he didn't know whether he would rob or rape the lady. She asked him if he didn't want to go to her apartment. Mr. Mirande stated that this frightened him in that she was so eager for sex and decided at that point to ask for money which she readily gave to him. He then said, "Don't worry. If I had wanted to rape you, I would have done it before."

The second offense for which Mr. Mirande is charged occurred on March 3, 1963, at which time he is supposed to have kidnapped and raped Patricia Ann Weir. Mr. Mirande stated that he knew Patricia Ann Weir, an 18-year-old single girl who worked in the theater. He had occasionally seen her there and on the evening of March 3 at approximately 11:00 p.m. he saw her walking toward the bus stop. He drove ahead of the bus and when she got off close to her home he was waiting for her. As she came close to the car he said to her, "You don't have to scream. I am not going to hurt you." He then told her to get into the car, which she did, and they drove out into the desert. He asked her to remove her clothing, which she did without resistance. He removed his clothes and performed the act of sexual intercourse. Miss Weir, according to the patient, did not resist, but during [fol. F] the process of sexual relations was tearful. Mr. Mirande was somewhat upset when he learned that the girl had not previously had sexual relations. He stated that if at any time the girl had refused or resisted, that he would not have proceeded. He then took her within a block or two of her house where he let her out. He asked if she would "tell on me." The girl did not respond. He stated "I didn't know how to ask her for forgiveness."

Mr. Mirande is age 23 and he has a common-law wife, age 30. They have been living together since August, 1961. His wife has two children by her first husband, a son, 11, and a daughter, 10. Mr. Mirande and his wife have a daughter, 9½ months of age. He has worked as a truck driver and also as a worker in a warehouse.

Mr. Mirande's father is age 55 and works as a painter in Mesa. He stated that he did not get along with his father during his adolescent years and was frequently beaten up by his father when he got into trouble. Mr. Mirande's mother died in 1946 at the age of 34 when Mr. Mirande was six years of age. He was reared by his step-mother, age unknown. He stated with reference to her, "I never could get adjusted to her." Mr. Mirande completed half of the ninth grade at the age of 15. Mr. Mirande was first placed on probation at the age of 14 after having stolen a car. Three months later he was sent to Fort Grant for a period of six months. Shortly after returning he was sentenced for a year on an attempted rape and assault charge. According to Mr. Mirande's description of this incident, he was walking by a home in which he saw a lady lying in bed with no clothes on. He went up to the front door and it was open; he entered the home and crawled in bed with the woman. Her husband returned home shortly and the police were called. In 1957 at the age of 17 Mr. Mirande was picked up in Los Angeles for being a peeping tom and charged with lack of supervision and was placed on probation. He was also arrested twice in L.A. on suspicion of armed robbery. He was in the Army from April, 1958, to July, 1959. He was placed in the brig for being a peeping tom and given an undesirable discharge. In December, 1959, he was sentenced to the Federal Penitentiary for transporting a stolen automobile across state lines.

Mr. Mirande is a 23-year-old Mexican man who is alert and oriented as to time, place, and person. His general knowledge and information is estimated to be within normal limits as is his intelligence. He is emotionally [fol. G] bland, showing little if any effect. He is shy, somewhat withdrawn. He tends to be somewhat hypoactive. The patient's responses to proverbs are autistic and somewhat bizarre; for example, to the proverb "a rolling stone gathers no moss", the patient interpreted this to mean "If you don't have sex with a woman, she can't get pregnant." To the proverb "a stitch in time saves nine",

Mr. Mirande's response is "If you try to shut something in, you keep it from going out." To the proverb "people in glass houses shouldn't throw stones", Mr. Mirande states "A person with one woman shouldn't go to another women." Mr. Mirande states that he is not particularly concerned about himself at this point or the trouble that he is in except in that it might interfere with his looking after his wife and child.

It is my diagnostic impression that Mr. Mirande has an emotional illness. I would classify him as a schizophrenic reaction, chronic, undifferentiated type.

It is my opinion that Mr. Mirande is aware of the charges that have been brought against him and is able to cooperate with his attorney in his own defense. Although Mr. Mirande has an emotional illness, I feel that at the time the acts were committed that he was aware of the nature and quality of the acts and that he was further aware that what he did was wrong.

/s/ James M. Kilgore, Jr.
JAMES M. KILGORE, JR., M.D.

JMK/db

[fol. H]

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA IN AND FOR
THE COUNTY OF MARICOPA

No. 41948

STATE OF ARIZONA, PLAINTIFF

vs.

ERNEST ARTHUR MIRANDA, DEFENDANT

REPORTER'S TRANSCRIPT OF PROCEEDINGS
June 20, 1963

BEFORE: The Honorable Yale McFate, Judge of the Superior Court, presiding in Division No. 10, with a jury.

APPEARANCES: Mr. Lawrence Turoff, Deputy County Attorney, in behalf of the State of Arizona; Mr. Alvin Moore, in behalf of the defendant.

[fol. 1] * * *

[fol. 2] THE COURT: The State versus Ernest Arthur Miranda. Is the State ready?

MR. TUROFF: State is ready.

MR. MOORE: Defense is ready, except for the record, we would like to renew our motion made before the trial for violation of substantial rights in delaying of the trial more than sixty days, as set forth in our former motion.

THE COURT: Very well, motion will be denied. The Clerk will call thirty-two jurors. Ladies and Gentlemen, as your names are called, please come forward and take seats in the jury box.

(Thereupon a jury was duly empaneled and sworn to try the cause at issue.)

THE COURT: The Clerk will now read the information in this case and state the dependant's plea.

(Thereupon the Clerk read the information.)

THE CLERK: To which the defendant entered a plea of not guilty.

THE COURT: Mr. Turoff, go ahead.

MR. TUROFF: The state waives opening.

MR. MOORE: We reserve our opening.

THE COURT: Very well, call your first witness.

MR. TUROFF: At this time, we would like to invoke the Rule.

[fol. 3] THE COURT: All right, all witnesses come forward.

(Thereupon the Clerk swore the following witnesses: Wilfred Young, Patricia Weir and Sue Williamson.)

THE COURT: Now, Ladies and Gentlemen, the Court is placing the witnesses under the Rule of Exclusion, and that means you will have to remain outside the hearing of these proceedings, and you will not be permitted to discuss either among yourselves or with any other person, what your testimony is going to be, and after you

have testified, do not reveal to anyone what you have testified about, until the case is finally submitted to the jury for decision. Do you understand that?

(Thereupon the witnesses answered in the affirmative.)

THE COURT: There is one exception and that is you may talk to the lawyers in the case at any time about the case, but otherwise, keep your testimony entirely to yourselves, and remain outside the hearing of these proceedings. The bailiff will show you chairs in the outer office.

MR. TUROFF: Call Patricia Weir.

[fol. 4] PATRICIA WEIR,

was called as a witness on behalf of the State, and having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TUROFF:

Q Will you state your name?
A It is Patricia Weir.
MR. TUROFF: Speak up a little louder please.
A Patricia Weir.
Q Where do you live?
A 1014 East Citrus Way.
O Is that in the City of Phoenix?
A Yes.
Q How old are you Patricia?
A Eighteen.
Q Are you married?
A No.
Q Patricia, were you married on March 3rd of this year?
A No.
Q Are you presently employed?
A No.
Q On March 2 and March 3 of this year, were you employed?
A Yes.

[fol. 5] Q Where were you working?
A The Paramount Theatre.
Q Is that here in Phoenix?
A Yes.
Q Maricopa County?
A Yes.
Q What did you do there?
A I worked at the concession stand.
Q Were you working on the night of March 2?
A Yes.
Q What time did you quit work, Patricia?
A It was about 10:30.
Q In the evening?
A Yes.
Q After you quit work, what did you do?
A Pardon?
Q After you quit work, what did you do?
A I went directly in the lounge and got dressed, and I waited down there until my bus came.
Q What time were you to catch the bus?
A 11:45.
Q Where were you going to catch this bus?
A On 1st Street and Monroe.
Q Did you catch it?
A Yes.
Q About what time was that? Was that 11:45?
[fol. 6] A Yes.
Q Where were you going on the bus, Patricia?
A Home.
Q To 1014 East Citrus Way?
A Yes.
Q With whom did you live at that address?
A My sister and her husband and my mother.
Q What is her name, your sister's name?
A It is Susan Williamson.
Q You say you did catch the bus, and where did you get off of the bus?
A 7th Street and Marlette.
Q 7th Street and Marlette?
A Yes.
Q Is that in Maricopa County?

A Yes.

Q Do you recall about what time you got off the bus?

A It was about ten after twelve.

Q Were you alone or were you with somebody at that time?

A I was alone.

Q Patricia, when you got off the bus, you got off at Marlette, you said, and 7th Street?

A Yes.

Q What did you do then?

[fol. 7] A I started, I was walking east.

Q On what street?

A On Marlette.

Q Were you walking towards your home?

A Yes.

Q Would you tell us, was it dark out?

A Yes.

Q Were there any people on the streets at that time?

A No.

Q What happened next, Patricia, after you started walking home, what next did you observe?

A Well, there is this—there was a parking lot behind this ballet school on Marlette, and I noticed that this car pulled out.

Q A car pulled out of the parking lot?

A Yes.

Q Did it come close to you at that time?

A Yes, I had to jump back from the car to keep from being hit.

Q Did you observe that car again, or did you observe that car and where it went?

A It went east on Marlette and it parked down across from these apartments.

Q About how far away was that? You may not be able to give us in feet, but was it in the next block or [fol. 8] was it in the same block you were in, or what?

A Yes, it was in the same block.

Q It was parked east of where you were, is that correct?

A Yes.

Q What happened next, Patricia?

A Well, I started walking and I noticed that this man was coming towards me.

Q At that time, did you see where he came from?

A Yes, from the parked car. I didn't see him get out of the car.

Q All right, you saw a man walking towards you. What happened?

A I didn't pay any attention because I always pass people walking on that street, and I just kept on walking, and finally, well, I just—it happened so, suddenly, I didn't have time to do anything.

Q What happened?

A Well, he told me not to scream, that he wouldn't hurt me.

Q Did he touch you in any way?

A Yes, he had my hands behind my back and one hand over my mouth and he started pulling me towards [fol. 9] the car.

Q Patricia, this man you have just referred to, is he in the courtroom today?

A Yes.

Q Would you point him out?

A Sitting over there (indicating).

Q There are three men sitting at this table Patricia. The one next to the bookcase, the gentleman in the white shirt, or the officer?

A On the left.

Q On the left, that is the man in the white shirt?

A In the suit.

Q In the suit next to the bookcase?

A Yes.

MR. TUROFF: Let the record show the witness has identified the defendant, Mr. Miranda.

Q At that time, Patricia, were you married to Mr. Miranda?

A No.

Q Have you ever been married to him?

A No.

Q Are you related to him in any manner?

A No.

A It was around me.

Q His hands were around you?

A Yes.

Q Do you know what we refer to when we say the male sex organ?

A Yes.

Q You say he made penetration. Would you tell us now what he made penetration with if you can, would you tell us what he made penetration with, Patricia?

A With his penis.

[fol. 17] Q With his penis; now, are you familiar with what we term the female sex organ?

A Yes.

Q Did he make penetration into your female organs?

A Yes.

Q Did you at any time, Patricia, permit him to do this voluntarily?

MR. MOORE: We object to the form of the question, leading and suggestive.

THE COURT: Overruled.

MR. TUROFF: You may answer. Did you permit him to do this voluntarily?

A Well, he was a lot stronger than I was.

Q Now, during the period of time that he made penetration, Patricia—strike that—what were you doing during this period of time that you have just testified to?

A I was pushing against him with my hands. I kept screaming. I was trying to get away but he was a lot stronger than I was, and I couldn't do anything.

Q Now, after he made penetration, I assume he then removed himself, is that correct?

A Yes.

Q What happened next?

[fol. 18] A He got dressed and—

Q Go ahead.

A And he got out of the car and he came back and sat in the front seat and he told me to get dressed.

Q What happened then?

A Well, at first, all I could do was just lay there and cry. It took me about five minutes to get up and get dressed.

Q Let's go back a little ways, Patricia: Prior to his removing himself, did he complete an act of sexual intercourse?

A Yes.

Q Now, you say he told you to get dressed and you did after awhile, after you attempted to calm down?

A Yes.

Q What happened next, Patricia?

A He got out of the car and he went into the front seat.

THE COURT: Excuse me, Ma'am, is there anyone on the jury who cannot hear the witness?

(No response from the jurors.)

THE COURT: Go ahead.

MR. TUROFF: Q He went into the front seat and what happened?

[fol. 19] A Then I got dressed.

Q After you got dressed, what happened next?

A Then I asked him, I said, "May I please have my watch back?"

Q Where was your watch at that time?

A It was on the back seat.

Q Do you know how it got there?

A He put it there.

Q He put it there; what happened next after you asked for your watch back?

A And he said, "I will if you say please to me."

Q Did you get your watch back?

A Yes.

Q What did he do next?

A Then he started the car and then—

Q He took you from—

A He took me to 12th Street and Rose Lane and dropped me there.

Q How far is that from your home, Patricia?

A It was about three—about four blocks.

Q Had you told him where to go, where to drop you off?

A He did, ask me, and I told him it was on Rose Lane, so he just dropped me off at 12th Street.

Q And you got out of the car, did you?

[fol. 20] A Yes.

Q What did you do next?

A I started walking home.

Q Walking home?

A And when I got about a block, I started running.

Q You started running home?

A Yes.

Q At that time, what was your physical condition?

A Well, after it happened, it was pretty hard to think. I couldn't think.

Q Were you calm or excited?

A I was excited.

Q Crying or not?

A I wasn't crying.

Q You got to your house, and you say you lived there with your sister and brother-in-law and your mother?

A Yes.

Q Did you enter your home?

A Yes.

Q Were they home at that time?

A Yes.

Q At that time, Patricia, did you tell them what had happened, what you told us now?

[fol. 21] A Not at first; it was about fifteen minutes before I could get things straight.

Q When you entered your house, what was your condition at that time?

A My hair was all over the place and I was—all my makeup was off.

Q Were you upset at that time?

A Yes.

Q Were you crying?

A Yes.

Q Then you say it was fifteen minutes before you told them what had happened; did they ask you what had happened?

A Yes, they kept trying to get it out of me and then my sister said, "If you don't shutup, I will have to call the police," and I still didn't quiet down yet, and then finally I did, and then she called the police and so I got ready and the police came out and questioned me.

Q Now, after the police came out, did you go to a hospital?

A Yes, thhe police took me to the hospital.

Q Patricia, would you tell us approximately what time, period of time this took place in? You say that you got off at 7th Street and Marlette about ten after twelve. Do you know what time you finally returned [fol. 22] home?

A I was about two.

Q About two?

A After two.

Q That was on March 3, 1963, is that right?

A Yes.

Q Patricia, at the outset, did you consent to entering Mr. Miranda's car?

A No.

MR. TUROFF: I have no further questions of this witness.

THE COURT: Before cross examination, it is time for the recess, so we will have a recess Ladies and Gentlemen, for fifteen minutes; and now during this recess and during each recess which we may have in this case, please bear in mind these admonitions: You are admonished that it is your duty not to converse among yourselves or with anyone else on any subject connected with this trial, or to form or express any opinion at all until the action is finally submitted to you for decision.

You are also admonished that you are not to view the place where the offense appears to have been committed.

I would like to further admonish you not to read or listen, not to read newspaper accounts, if any, of this [fol. 23] particular case, and not to listen to any broadcasts, television broadcasts or radio broadcasts about the case, if you can possibly avoid doing so. We'll see you in fifteen minutes.

(Thereupon a recess was taken after which proceedings resumed as follows:)

PATRICIA WEIR,

resumed the witness stand for further examination as follows:

CROSS EXAMINATION

BY MR. MOORE:

Q Miss Weir, I am going to try not to embarrass you on this cross examination, but the liberty of a man's life is at stake, and I must ask you a number of questions and please don't break down. Just give me quiet truthful answers and we will get along just fine.

First, I want to establish some time elements. At what time did the defendant accost you or stop you on the street?

A It was fifteen after twelve.

Q I believe you testified he drove about twenty or twenty-five minutes?

A Yes.

[fol. 24] Q Before he parked somewhere?

A Yes, that is right.

Q Do you know where that somewhere was?

A I was in the desert area.

Q But you don't know whether it was north, south, east or west?

A It was east.

Q And you don't know how far?

A No, I don't.

Q Now, at what time did he let you out near your home.

A It was after two.

Q Do you know how much after two? About how many minutes? Did you have your watch? I believe you testified he had given your watch back to you.

A I was about fifteen after two.

Q Two-fifteen then you returned home. Now, how long after arriving home before you explained to your sister what had happened?

A About twenty minutes.

Q Then you explained to your sister about two thirty-five. Now, how long after you talked to your sister of the occurrence was it before the police arrived?

A It was about fifteen minutes.

Q That would make their arrival at about 3:00?

[fol. 25] A Yes.

Q Now then, at the time the defendant accosted you on the street, what did he say to you, and what did you say to him?

A He said, "Don't scream, I am not going to hurt you." He said, "If you don't scream, I won't hurt you."

Q What did you say to him?

A I said—

Q You said what?

A "Let me go, please let me go."

Q Now, at the point he accosted you on the street, will you tell us again where that was?

A 7th and Marlette.

Q 7th and Marlette?

A Yes.

Q Is that a residential area or a business area?

A Residential area.

Q Houses on both sides of the street? Are there residences on both sides of the street at that point?

A Yes.

Q What day of the year was this?

A March 3rd.

Q Was it a cool or balmy evening?

[fol. 26] A It wasn't very cool.

Q How were you dressed, Patricia?

A I had a suit on.

Q What type of suit?

A Made just like this, a vest.

Q Was it a two piece suit?

A Three piece.

Q And the vest or whatever you call it, was it a pull-over or does it button?

A It was a pull-over.

Q What other clothing did you wear?

A A bra, slip, pants.

Q Full slip or half slip?
A Full slip.
Q Were you wearing shoes and stockings?
A No, just flats.
Q Just flats?
A Yes.
Q How old were you on March 3rd?
A Eighteen.
Q When were you eighteen, Patricia?
A I was eighteen November 24th.
Q Now, how did he place you in the car? How did he get you in there?
A He laid me down in the back seat.
Q But getting you into the car, how did you get in? [fol. 27] Did he hold the door open and say, "Get in," and you went in of your own accord?
A He pushed me in.
Q Wnen you say "pushed", you mean he shoved you?
A No.
Q Did he have ahold of your arm as you went in the door or not?
A Yes.
Q When did he turn loose of your arm?
A When he started to tie them.
Q When he started to what, tie?
A To tie my arms.
Q What kind of string, rope or what did he use to tie your arms?
A It was a thick rope.
Q Did he have two ropes or one?
A He had a rope for my hands and a rope for my angles.
Q Two ropes?
A Two.
Q Where did he get the ropes?
A In the front seat. He had the rope in his hand.
Q Did he have the ropes in his hands at the time he grabbed you by the arm?
[fol. 28] A Yes.
Q When did you first see the rope?
A When he started to tie me.

Q When he accosted you on the street, he didn't have the ropes in his hand, did he?

A No.

Q He got the ropes somewhere from the car then?

A Yes.

Q Could you tell whether they were in the front seat or back seat?

A I am not sure where they were.

Q Did you scream?

A No, I couldn't. It all happened so sudden, I couldn't scream. It all happened so fast

Q But just your panicky situation is all that kept you from screaming, wasn't it?

A Yes.

Q He didn't have his hand over your mouth all that time?

A Yes, he did.

Q All that time?

A When he was putting me in the car.

Q He did when he accosted you?

A Yes.

Q When did he take his hand off your mouth?

A When he put me in the car.

[fol. 29] Q Then he tied you up; how long did it take him to tie you up?

A About ten minutes.

Q About ten minuttes; and during the time he was tying you up, he was using both hands, was he not, tying you up?

A Yes.

Q During that interval, did you scream?

A No.

Q There were houses in the area, weren't there?

A Yes.

Q Why didn't you?

A Because he threatened me. I mean, he said, "Don't scream, I won't hurt you."

Q He said that out in the street?

A Yes.

Q After he tied you up in the back seat, what did he do?

A He put something sharp against my neck.
Q After he tied you up?
A Yes.
Q Not before?
A No.
Q Were there street lights there?
A No.
[fol. 30] Q Was it dark, medium, or how light was it?
A It was dark.
Q So you don't know what that something sharp was he put against your neck?
A No, I do not.
Q All right, now then, he drove away with you?
A Yes.
Q Were you lying down in the back seat?
A Yes, my face to the back.
Q With your face—
A To the back seat.
Q I believe in your direct testimony, you testified that he turned south at 10th Street?
A Yes.
Q How could you tell?
A Well, because the next street is 9th and it was too close for him to turn, then he went farther than 9th Street.
Q So you assumed--you didn't see the signs?
A No, I didn't.
Q You couldn't see the signs so you just assumed he turned south on 10th Street?
A Yes.
Q You don't know it, do you?
A Yes, I do know it.
[fol. 31] Q How?
A Because 9th Street was too close for him to turn there, and he went farther than that.
Q Could you tell how far he went lying there facing that back seat?
A Yes, I could.
Q All right, he turned south on 10th Street. Where did he go from there?
A Then he turned east on Rose Lane.

Q Were you still lying down in the same position?
A Yes.
Q How could you tell that it was Rose Lane he turned on?
A Because the next street was Rose Lane, and he turned east.
Q You could tell?
A Yes.
Q You could tell the direction lying in the back seat?
A Yes.
Q How far did he go on Rose Lane?
A I don't know how far he went from there?
Q Do you know where he turned off from there?
A No.
Q How long did you drive before you stopped
[fol. 32] A About twenty minutes.
Q At any time, did he stop for an intersection while traveling?
A Yes.
Q How many times did he stop the car between the time he first accosted you and he finally stopped on the desert?
A I am not sure.
Q Let's make an estimate, about how many times? Do you have any idea about the number? Was it five?
A It was about three or four times, I guess.
Q And all this time you were tied up lying in the back seat?
A Yes.
Q And it took you how many minutes—I believe you testified twenty minutes from the time you were accosted until you stopped on the desert?
A Yes.
Q When he stopped, you were still in the back seat?
A Yes.
Q And was still tied up?
A Yes.
Q What did he do then after he stopped?
A He got out of the car and it was about ten min-
[fol. 33] utes before he came to the back seat.
Q About how long?

(Thereupon the witness was excused.)

MR. TUROFF: Mrs. Williamson.

[fol. 40] SUE WILLIAMSON,

was called as a witness on behalf of the State, and having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TUROFF:

Q State you name please.
A Sue Williamson.
Q Where do you live?
A 1014 East Citrus Way.
Q Mrs. Williamson, are you related to Patricia Weir?
A Yes.
Q What is your relationship to her?
A Sister.
Q Calling your attention to the early morning of March 3, 1963, was Patricia, during that period of time, was she living with you at that address?
A Yes, she was.
Q Calling your attention again to the early morning of that date, did you have occasion to see your sister?
A Yes, I did.
Q Was that at your home?
A Yes, it was.
[fol. 41] Q Had you been home that night and morning?
A Yes.
Q Had she been home all during that period of time?
A No.
Q Would you tell us what time she did come home that morning?
A She came home at twenty-five until two.
Q Did you see her when she came home?
A Yes, I did. I was going out to look for her because she was late coming home.
Q Would you describe to us, Mrs. Williamson, the physical condition of your sister as you saw her when she came home?

A She came home, pounded on the door, her hair was all over like she had been in a fight, and her dress was brand new, a new suit, and it was a mess, and she was crying and carrying on, and I asked her what was the matter, and she would not tell me.

Q How long a period of time did she cry and carry on before she could tell you what happened?

A A good fifteen minutes.

Q Did she then tell you what happened?

A I kept at her, if she didn't tell me what happened, I was going to call the police.

[fol. 42] Q Did she tell you what happened?

A Yes, she did.

Q What did she tell you happened?

A She told me a man had picked her up when she got off the bus and took her out on the desert and I said, "Patricia, he didn't touch you, did he?"

She said, "Yes."

I said, "All right," and I went right and called the police.

Q You called the police?

A I called the police.

Q They came right out?

A They came right out.

Q How long has your sister lived with you, Mrs. Williamson?

A She had lived with us about two years at the time, and before that, I had lived right in the front house and they had lived in the house in the back of us.

Q Who is "they"?

A My mother and Pat and my step-father, which is dead.

Q Did your mother live with you at 1014 West Citrus Way?

A Yes, she did.

Q To your knowledge, did Pat usually go out with [fol. 43] boys?

A Pat has never—

MR. MOORE: I object to that as being irrelevant and immaterial, not an issue in the case.

MR. TUROFF: I think defense Counsel has already attempted to bring up the matter of her conduct.
THE COURT. Sustained.
MR. TUROFF: I have no further questions.
MR. MOORE: I have no questions.
MR. TUROFF: May this witness be excused?
THE COURT: You may be excused.
MR. TUROFF: May Miss Weir be excused?
THE COURT: Yes, you may both be excused.

(Thereupon the witness was excused.)

MR. TUROFF: Call Officer Cooley.

CARROLL COOLEY,

was called as a witness on behalf of the State, and being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TUROFF:

Q Would you state your name, please?
A Carroll Cooley.
Q What is your occupation?
[fol. 44] A Police officer.
Q Are you connected with any particular detail?
A Work for the City of Phoenix Detective Bureau, in the Crimes Against Persons' Detail.
Q How long have you been so employed?
A Little over five years.
Q Were you so employed on the day of March 3rd, 1963?
A Yes, Sir.
Q In connection with you employment, Officer, did you have occasion to see the defendant, Ernest Miranda?
A Yes, Sir, I did.
Q Is he in the courtroom today?
A Yes, Sir.
Q Will you point him out, please?
A He's the gentleman sitting over here with the brown suit on.

MR. TUROFF: Let the record show the witness has identified the defendant.

THE COURT: Very well.

MR. TUROFF: Q Where did you first see the defendant, Officer?

A At his home at 2525 West Maricopa.

Q What was your purpose in going there?

[fol. 45] A We had gone there to investigate a rape.

Q Did you have an occasion at that time to take the defendant down to the police department?

A Yes, Sir, I did.

Q Who was with you when you went out there?

A Detective Bill Young.

Q When you got down to the police station, Officer, was the defendant in your custody?

A Yes, Sir, he was.

Q Did you cause anything to be done with the defendant at that time?

A Yes, Sir, we placed him in a line-up.

Q What did that consist of, Officer?

A Four other Mexican males all approximately the same age and height, build.

Q Did you have any persons view that line-up, Officer?

A Yes, Sir, we called in the victim, Patricia Weir.

Q Did she view the line-up?

A Yes, Sir, she did.

Q Officer, after Miss Weir viewed the line-up, did you have occasion to have a discussion with the defendant?

A Yes, Sir, I did.

Q Where did this discussion take place?

[fol. 46] A In Interrogation Room No. 2 of the detective bureau.

Q Who was present during this discussion, Officer?

A Myself, Detective Young and the defendant.

Q Do you know approximately what time of day this took place?

A Approximately 11:30.

Q Was that on March 13th?

A Yes, Sir.

Q 11:30, is that a.m. or p.m.?

A A.M.

Q Now, during the period, let's say the period of time you had first arrested or picked up the defendant, brought him to the police department and then had the interrogation with him, was he in your custody all during that period of time?

A Yes, Sir, he was.

Q During that period of time, did you make any threats or use any force on the defendant?

A No, Sir.

Q During this period of time, did you make the defendant any promises of immunity if he would have this discussion with you?

A No, Sir, I did not.

Q Did any other officers in your presence, do any [fol. 47] of these acts?

A No, Sir.

Q Officer, would you relate to us the best of your ability now, what the conversation you had with the defendant was, what you said to him, and what his answers were to you?

A Yes, Sir, the conversation was in regards to the rape of Patricia Weir, and when we first started talking to the defendant he at first denied this. After talking to him for awhile—

MR. MOORE: We object, Your Honor, to the narrative. We would like for him to use questions and answers to get this evidence.

THE COURT: I think he is relating the substance of the conversation. Just confine yourself to the substance as nearly as you can recall of the conversation.

THE WITNESS: Yes, Sir.

MR. TUROFF: Go on.

A He said, after a short time, he said that he was the person that had raped this girl that we were questioning him about. However, he did not know her name. He said that, he related that he had been up in the northeast area of Phoenix driving around, when he saw a girl walking on a street.

[fol. 48] MR. MOORE: We again request questions and answers instead of a story.

THE COURT: Overruled.

MR. TURNOFF: Continue, Officer.

A He did tell it at length, of his own free will, and he said that he had—

MR. MOORE: We ask that be stricken.

THE COURT: It is not responsive. You were relating the conversation, so just go ahead.

MR. TUROFF: Just relate the conversation as you were, Officer.

A He saw this girl walking on the street, he said, so he decided he would pull up ahead of her and stop. He stopped and got out of his car and opened the back door of his automobile. He said when the girl approached him he told her, he said, "Don't make any noise, and get into the car," and he said she got into the car, he said, in the back seat.

After getting into the car, he said he took a small rope he had inside the car and he tied her hands and her ankles, then he got into the front seat behind the driver's wheel and he drove to a location several miles from there in the northeast direction to the area of a desert.

Q Did he tell you what street this took place on?

[fol. 49] A He didn't know the street. I asked him the street, and he didn't know the name of the street, he didn't know exactly where he was located when he stopped. It was just in the desert area, couple of miles from where picked the girl up.

He said then when he got there he noticed that the girl was untied, and he got into the back seat and he asked her if she would, or he told her to take her clothes off and she said, "No, would you please take me home?"

He said then he took her clothes off for her. After he had undressed her, she began to cry, and started begging him to not do this. She said she had never had any relations with a man before.

He said he went ahead and performed the act of intercourse, and in so doing was only able to get about a half inch of his penis in and at which time he said he did reach a climax, but he didn't believe that he had reached a climax inside of her.

He said after the act of intercourse, he then told her to get dressed and asked her where she lived and she told

him in the area, she told him 10th or 12th Street. He couldn't remember where, so he said he drove her back to the area where he picked her up and dropped her off [fol. 50] in that general area.

When he started to let her out, why she told him, "Well, this is not where I live."

He said, "This is as far as I am taking you," and then he asked her if she would pray for him. She got out of the car and he left and he said then he went home.

Q Was that the essence of the conversation you had with him at that time?

A That was the essence of the conversation.

Q Officer, was this conversation reduced, or was the defendant's conversation with you reduced to writing?

A Yes, Sir, it was.

Q Who wrote it down, Officer?

A He wrote his own statement down.

Q He wrote it down?

A Yes, Sir.

Q Were you present, Officer, when he wrote this?

A Yes, Sir, I was.

Q Officer, I will show you what has been marked State's Exhibit No. 1 for identification and ask you to look at that and tell us whether or not you can identify that.

A Yes, Sir, I can identify it.

[fol. 51] Q How can you identify it, Officer?

A My signature is on the bottom, and I recognize the heading, the writing.

Q Could you tell us when you placed your signature on that?

A After the statement was complete.

Q The same day?

A The same time, yes. It was 1:30 p.m. on 3-13-63, Interrogation Room No. 2 of the Detective Bureau.

Q Is this the statement that you said the defendant reduced to writing?

A Yes, Sir, it is.

MR. TUROFF: At this time, State will move to introduce the exhibit in evidence.

MR. MOORE: May I ask some questions on voir dire?

THE COURT: Yes, you may.

VOIR DIRE EXAMINATION

MR. MOORE: Q Officer Cooley, in the taking of this statement, what did you say to the defendant to get him to make this statement?

A I asked the defendant if he would tell us, write the same story that he had just told me, and he said that he would.

Q Did you warn him of his rights?

A Yes, Sir, at the heading of the statement is a para-
[fol. 52] graph typed out, and I read this paragraph to him outloud.

Q Did you read that to him outloud?

A Yes, Sir.

Q But did you ever, before or during your conversation or before taking this statement, did you ever advise the defendant he was entitled to the services of an attorney?

A When I read —

Q Before he made any statement?

A When I read the statement right there.

Q I don't see in the statement that it says where he is entitled to the advise of an attorney before he made it.

A No, Sir.

Q It is not in that statement?

A It doesn't say anything about an attorney. Would you like for me to read it?

Q No, it will be an exhibit if it is admitted and the jury can read it, but you didn't tell him he could have an attorney?

MR. TUROFF: This is not proper voir dire. He may go into this on cross examination, but this is not proper voir dire.

THE COURT: Sustained.

MR. MOORE: We object because the Supreme Court
[fol. 53] of the United States says a man is entitled to an attorney at the time of his arrest.

MR. TUROFF: State offers in evidence State's Exhibit 1 for identification.

THE COURT: Objection is overruled, may be admitted, Exhibit 1 in evidence.

MR. TUROFF: I have no further questions.

CROSS EXAMINATION

BY MR. MOORE:

Q It is not your practice to advise people you arrest that they are entitled to the services of an attorney before they make a statement?

A No, Sir.

MR. MOORE: That is all.

THE COURT: All right, you may step down, Sir.

(Thereupon the witness was excused.)

THE COURT: Before you call another witness, we will take a recess. We will be in recess, Ladies and Gentlemen, until 1:30 this afternoon.

[fol. 54] June 20, 1963
1:30 o'clock P. M.
Afternoon Session

(All parties being present as heretofore noted, proceedings resumed as follows:)

THE COURT: Let's proceed with the case.

MR. TUROFF: Call Officer Young.

WILFRED YOUNG,

was called as a witness on behalf of the State, and having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TUROFF:

Q Would you state your name, please?

A Wilfred Young.

Q What is your occupation?

A Police officer, City of Phoenix.

A Are you connected with any particular detail of the police department?

A Crime Against Persons' Detail, Detective Bureau.

Q How long have you been so employed, Officer?

[fol. 55] A Ten years.

Q Were you working on March 3, 1963?

A Yes, Sir.

Q On that date, Officer, did you have occasion to see the defendant?

A Yes, Sir.

Q Is he in the courtroom today?

A Yes, Sir, he is.

Q Point him out, will you please?

A The gentleman sitting at the table with black hair and glasses.

Q On that date, where did you first see him?

A I beg your pardon?

Q On that date, Officer, on the 3rd of March, where did you first see the defendant?

A 2525 West Maricopa.

Q Where you in the company of another officer?

A Detective Carroll Cooley.

Q On that date, did you have occasion to take Mr. Miranda down to the police department?

A Yes, Sir.

Q Okay, and did you, on that date, have an occasion to have a conversation, either you or Officer Cooley, in your presence, with the defendant?

A Yes, Sir.

Q Would you tell us approximately what time that [fol. 56] conversation took place?

A Between 11:30 and 12.

Q Where did it take place, Officer?

A Interrogation Room No. 2 in the Detective Bureau.

Q Who was present during this conversation?

A Detective Cooley, myself and Mr. Miranda.

Q Prior to this conversation, Officer, did you make any threats to Mr. Miranda?

A No, Sir.

Q Did you use any force on Mr. Miranda to have him hold this conversation with you?

A No, Sir.

Q Did you make him any promises of immunity?

A No, Sir.

Q In your presence, did Officer Cooley do any of these things?

A No, Sir.

order to do that, we have put on the evidence, and I want to go over it very briefly as to what the evidence indicated.

The evidence indicated that Miss Weir was working at the Paramount Theatre on the night of March 2, 1963. She left the theatre somewhere around a quarter to twelve to catch her bus. Until that point, she had been working, she had worked up until I think, 10:30 and went to sit in the theatre lounge to wait and let time go by before she could catch her bus.

She went to her bus, did catch it about a quarter to twelve, and this was taking her to the area of her home. She got off, I believe at 7th Street and Marlette. This was sometime after midnight. This was on March 3rd. She said it was about ten minutes after that.

She got off the bus and proceeded to walk east on Marlette towards her home. As she did so, she noticed a car pull out of a parking lot, park down the road. She paid no attention to it apparently, and the next thing she [fol. 64] knew, she had been grabbed by the defendant. He grabbed her arms, put one hand across her mouth and said, "Don't yell, and you won't get hurt."

Ladies and Gentlemen, this is a dark night. This is a dark night; she's eighteen years of age. He takes her to the car, throws her into the back seat, pushes her, I think she said, so that she sprawled out on the seat, and binds her arms behind her back, and also binds her ankles with rope, he got from somewhere in the car.

She then felt a sharp instrument against her neck. Testimony came out, she admitted she did not scream. She was asked why she did not scream. He had his hand across her face and mouth when he first accosted her, and second, she was too frightened to scream.

He then got in the car and drove for about twenty minutes to somewhere in a desert area, at which time he stopped the car, got out, did something a few minutes outside, she doesn't know what he had done, because she testified she was still bound, and that she was lying down facing the back seat.

She then said he got into the car with her, that he had untied her and told her to undress. During this period [fol. 65] of time she testified that she was frightened, that she was scared, that she was crying all this period

of time, and when she did talk to him she begged him to leave her alone.

MR. MOORE: Just a moment, we object to the argument to the jury that she was frightened, she was scared, because the word "fear" has been stricken from the information. Fear doesn't enter into this.

MR. TUROFF: She did testify to it, and I am entitled to argue on the testimony.

THE COURT: I am not sure whether she did or not.

MR. MOORE: The information on motion of the defendant, the word "fear" was stricken from it.

THE COURT: If it is in the evidence, Counsel may comment on it.

MR. TUROFF: If it is not, the jury will remember that. We could have the record searched.

THE COURT: I am not sure whether she said she was or not. I will leave that up to the jury. Go ahead.

MR. TUROFF: She said she had begged him to leave her alone, to let her go, take her home. He told her to undress and she refused to do that. During this period of time she said that she attempted to push him away to [fol. 66] get him away from her, but that he was too strong for her. He apparently over came her. He then proceeded to undress her.

He succeeded in undressing her and then undressed himself, and during this period of time she testified she was crying, she was yelling, she was asking him to let her alone. That is when he proceeded to have this act of sexual intercourse with her. In his statement to the police, he admits these acts; he admits she begged him to leave her alone.

He has this act of sexual intercourse, and the Court will describe what is necessary, what is meant by "penetration" when we talk about it, and when Miss Weir talked about it from the witness stand. The Court will describe to you what that is, what is necessary for that to complete the act of sexual intercourse.

She stated on both direct and cross examination, I believe at first she said that she wasn't sure, the first time he attempted, he got on top of her, she wasn't sure what made penetration. The second time she told me it was

his penis. On cross examination she said she thought it was his penis.

Here is a girl, it is dark out at night, she's frightened, [fol. 67] she's been crying, she's begged him to leave her alone.

She did testify when he started, his hands were around her, so she should be pretty darn scared, and not too certain what was going on in the car at that time.

After he finished, he's through with her. He got out, got dressed, told her to dress and drove to where she said she lived or in the area where he picked her up. She got out of the car, he took off. It was late, she started down the street, started walking. When she got halfway down the block, she ran—she ran home. She first entered the house and she was hysterical. It took fifteen minutes to calm this girl down so she could tell her sister what had happened to her. When she finally told her sister what happened to her, her sister immediately called the police department.

She said at no time did she go with the defendant willingly, at no time did she have this act of intercourse with him willingly, but apparently because he was so strong for her, she was not able to defend herself. She was not able to ward him off; that he did complete the act with her.

You heard her sister, Mrs. Williamson, testify to her [fol. 68] condition, particularly when she got home, her clothes were a mess, her hair was a mess, her makeup was off, and she was in a hysterical condition and could not even relate for about fifteen minutes what had happened to her. When she did so, the police were called.

Then you remember Detective Cooley's testimony as to the conversation that he had with the defendant after the defendant had been brought to the police department some ten days later. He said the lineup was run and that it was viewed by the victim. He then had this talk with Mr. Miranda in which he asked him whether or not he had in fact, raped this girl. Now, here's where—

MR. MOORE: We object to the statement, he had in fact, raped the girl. There is nothing in the testimony to that effect. Mr. Young and Mr. Cooley testified he raped

the girl, but nothing that he said it in the confession to that effect.

MR. TUROFF: I believe the record will show he used these words.

THE COURT: I think one of the officers did use that term. Again, I will submit to the memory of the jury on it. You understand, of course, that arguments of Counsel are not evidence and you should make up your minds what was said from the evidence produced here in [fol. 69] Court. Go ahead, Mr. Turoff.

MR. TUROFF: Now, at this point, the story starts to change a little bit after he's already been apprehended, the story starts to change. He admits it. You have this to take with you to the deliberation room. This is his written statement. You have read it all. He admits seeing the girl walking up the street. He admits stopping a little ahead of her and getting out of the car. He admits grabbing her by the arm.

Here's where the story starts to change. He said he asked her to get into the car. He said she got into the car without force. Here we go back together again—he says he tied her hands and ankles. If you believe she willingly got in the car with him, what was the need of tying her up? Why did he tie her up if she readily went along with what he wanted to do? Anyway he did tie her up and he admits he tied her up.

He said he drove a few miles away from the area of 7th Street and Marlette.

One problem we are faced with is that the girl didn't know where she had been taken to. We must show as far as the rape is concerned, that it happened in the county of Maricopa a few miles from 7th Street and Mar- [fol. 70] lette. We submit it is still in Maricopa County. I believe you can figure it out for yourselves it is still in this county.

Then he says he asked her to take her clothes off, and she didn't do it, so we again have a consistency between his statement to the police and her testimony. He said he started to take her clothes off and without any force. She readily submitted to this, he says. This is, we submit, an attempt on his part to at least take care of the forcible rape aspect.

She testified that she attempted to call him off, push him away, but she couldn't do it, and all during this period of time, she was crying, and she was in a very hysterical frame of mind then.

Then he goes in and asks her to lay down. She did. Again, we submit he said she did it voluntarily. We submit it was not voluntarily, and you heard the evidence on that.

Then he says he did not get his penis in, or he did get it in about a half an inch. I don't want to belabor this point with you, Ladies and Gentlemen. It is necessary that we do go over some of these aspects, but I don't want to belavor it. The Judge will instruct you as to the degree of penetration necessary to complete the act he is charged with.

[fol. 71] But he told her to get her clothes back on and he drove her home. Then he says he couldn't say he was sorry for what he did, but asked her to pray for him. That is the statement you will be able to read.

We submit, Ladies and Gentlemen, that the State has shown by the testimony that you have heard from the victim, the victim's sister who testified, as to the condition after the acts had been completed, that force was used.

The degree of force we submit, is not that degree of force nesessary to render her unconscious. He didn't have to beat her to a pulp. The Statute says that the act is completed where the female's resistance is overcome by force or violence, or where the female is prevented from resisting by threats of immediate or great bodily harm.

MR. MOORE: We object to reading that portion of the Statute because it is not before the Court or jury. No threat of bodily harm is alleged in the information.

We ask for a mis-trial at this time for prejudicial statements by the County Attorney.

THE COURT: I think it would fall within the terms of the second count.

MR. TUROFF: We have alleged it, and we ask you [fol. 72] read the statute.

THE COURT: Go ahead.

MR. TUROFF: This is a portion of what he has been charged with, Ladies and Gentlemen. We ask you then

to, in view of this Statute, to view the evidence that you have heard, to see whether in fact this girl voluntarily—

COLLOQUY BETWEEN COURT AND COUNSEL

MR. MOORE: May I pray the indulgence of the Court just a moment, without the jury, I would like to present this to the Court.

THE COURT: All right, come up.

(Thereupon the following proceedings were had at the bench out of hearing of the jury.)

THE COURT: He pleads rape in the first degree, that is No. 2.

MR. MOORE: No. 3 is not pleaded in this information. The information does not plead No. 3, and any reference to No. 3 is prejudicial to the defendant. On motion the Court struck the word "fear" out of the original complaint.

MR. TUROFF: It is embodied in the Statute. Read it.

MR. MOORE: Just force and violence, that is all the defendant is charged with.

THE COURT: I will have to hold you to that.

MR. TUROFF: That is amended. Read the amend-
[fol. 73] ment.

THE COURT: You haven't framed it in your information.

MR. TUROFF: We pleaded the Statute.

THE COURT: You have limited it here to force and violence. Fear is stricken for some reason.

(Mr. Turoff reads from the Statute.)

MR. MOORE: That is not pleaded.

MR. TUROFF: Doesn't have to be pleaded.

THE COURT: He says you have pleaded No. 2 and you have not pleaded No. 3.

MR. MOORE: You only pleaded force and violence. You have not pleaded the other. Here it is.

MR. TUROFF: If the Court please, we submit the pleading of the Statute 13—6 11, puts the entire Statute in.

THE COURT: I can't go along with you on that. You have limited yourself to certain specific portions of the Statute. You should be limited to that. That will be the ruling anyway. Go ahead.

(Thereupon the following proceedings were had before the jury.)

THE COURT: Ladies and Gentlemen, the remarks of Counsel in respect to resistance of the lady and the over-[fol. 74] coming of resistance by threats of immediate and great bodily harm, or words to that effect, will be stricken from the record, and you are instructed to disregard that.

I will instruct you later on what is necessary to be proved by the State, in order to constitute the crime of first degree rape, but you will disregard these remarks of Counsel. Go ahead.

MR. TUROFF: The only issue you have then in front of you is whether or not she consented, or whether or not the act of sexual intercourse was because her resistance was overcome by force or violence. We submit all the evidence you have heard just recently would indicate that the latter is the correct interpretation, that she did not wilfully get in that car. The inconsistencies between what the defendant said took place and what she tells us today are inconsistencies that are in her favor. If she did wilfully do what he would have you believe she did, there would have been no need for him to tie her up. We submit to you that her acts after she had been dropped off by the defendant, is consistent with the fact she did not go with him wilfully. She did not enter into this act of intercourse with him wilfully, but in fact, she was forced to, by his own force and violence, directed against [fol. 75] her.

Ladies and Gentlemen, the State has two cracks at you, this one, and after the defense has made his remarks, we again have a chance to talk to you. The reason for that is that the State has the burden of proof, and we are given then the privilege of talking to you twice. In case any questions are raised by defense Counsel, I will attempt to clear them up when I talk to you again. Thank you for your attention to this matter.

THE COURT: Mr. Moore.

SUMMATION OF MR. MOORE

MR. MOORE: If the Court please, Counsel for the State, Ladies and Gentlemen of the Jury: As an attorney, and as a father, it is one of the cases I don't like to be involved with, but however, under our legal procedures, regardless of the type of case it is, the defendant is entitled to the best defense that he can have.

You know that perhaps a doctor doesn't enjoy operating for locked bowels, but he has to. Perhaps you, as jurors, do not enjoy sitting on this case, but it is your duty as a citizen to do so, to determine the issues here between the State of Arizona and the accused.

Now, we all perform our proper parts in this little drama. The Court is going to tell you the law. He has [fol. 76] ruled on the admissibility of the evidence, on what we can argue to you about, and you and I both must accept the Court's word as to the law.

The facts we try to bring out to you, both the State's Counsel and myself, the best of our ability, in the manner most favorable to our client, the State of Arizona or the accused. We present to you the argument which is part of the scheme of our jurisprudence in our state. In this Court, we present our argument, not to try to influence you, not to spellbind you with our oratory or to show how intelligent we are, or how we wrap somebody around our fingers on the witness stand, but the purpose of our argument is to assist you in your deliberations in this case, to analyze the testimony, and to weigh it, and to arrive at a proper and a just verdict in your jury room.

Nothing I say is intended to influence you. I am sure the State's Counsel didn't intend to influence you. We want to try to be of some assistance if possible and to do so, I at first go to the meat in the coconut, the issue involved in the case. I would read to you again, the charges in this case, omitting the caption and ginger [fol. 77] bread, so to speak:

(Reading) "The said Ernest Arthur Miranda on or about the 3rd day of March, 1963, and before the filing of this complaint at Northeast Phoenix Precinct, in the County of Maricopa, State of Arizona, did then and there wilfully, unlawfully and feloniously, seize, confine, abduct,

conceal, kidnap or carry away one Patricia Ann Weir for the purpose of raping and did rape said Patricia Ann Weir, said Patricia Ann Weir not being related in any way to said defendant, Ernest Arthur Miranda, all contrary to the provisions of Section 13-492, A'R'S'.

"Count 2: For a further and separate cause of action, being a different offense from, but connected in its commission with the charge set forth in Count 1 hereof, the said Ernest Arthur Miranda is accused by this complaint of the crime of rape, first degree, a felony, committed as follows to wit:

"The said Ernest Arthur Miranda on or about the 3rd day of March, 1963, and before the filing of this complaint at Northeast Phoenix Precinct, in the County of Maricopa, State of Arizona, did then and there wilfully, unlawfully and feloniously, and by force and violence, have [fol. 78] and accomplish an act of sexual intercourse with and upon one Patricia Ann Weir, a female person, who was not then and there the wife of the defendant, without the consent and against the will of the said Patricia Ann Weir, all of which is contrary to the provisions of Section 13-611, A'R'S', as amended, 1962."

Now then, let's follow this and see what they have to prove, what the State has to prove to make their case. The Court will instruct you that the State must prove this charge beyond a reasonable doubt or it will be your duty to return a verdict of not guilty for the defendant.

Now, they have proven this one thing. We admit they have proven that the defendant accosted the prosecuting witness, Patricia Weir, in Maricopa County, in the City of Phoenix.

But in order to make it a kidnapping, he had to do that with the intention to commit a crime, and they allege the crime was rape, and that he did commit the crime of rape in Maricopa County, State of Arizona.

That is on kidnapping, in order to make this a kidnapping, to make this charge kidnapping complete, he must have put her in the vehicle without her consent, forcibly put her in the car, and take her from here to [fol. 79] wherever the sexual intercourse was accomplished, whether it was rape or seduction. But it had to

be rape to make it kidnapping. Seduction is no good. So, they say he took her to a place in Maricopa County where he committed the crime of rape. If they can't prove that beyond a reasonable doubt, it is the duty of this jury to return a verdict of not guilty.

Now, I will ask you where is there one scintilla of evidence that the crime of rape was committed in Maricopa County, Arizona?

The evidence is this, if I remember correctly, and if I misstate it, forgive me. You heard the evidence, you know it better than I do. Patricia Ann Weir testified that they drove from 7th Street and Maryvale, I believe it was up here, some 23 or 25 minutes, to a point in the desert. Where in the desert, she did not know.

And I say to you that from that point to the Yavapai County Line can be driven in less than 25 minutes. And to a point to the Pinal County Line over by Apache Junction can be driven in approximately that time, so there is no evidence before this jury that the crime of rape was committed in Maricopa County, Arizona. Nobody knows where it was committed—somewhere out there 25 minutes [fol. 80] away from where, according to the prosecuting witness, she was first accosted.

Now, let's get down to this crime of rape and see what happens. The Court will instruct you as to the amount of resistance required on the part of the prosecuting witness before she is forced to the act of sexual intercourse. There is no going into the background of Patricia Ann Weir to see whether she's a good girl or a bad girl. We must assume and you must assume she was a good girl, and virtuous up until that time.

But you assume that, you've got to also assume she's going to resist the attentions of this male, the attentions of the defendant. What resistance was shown here? Where did she resist?

Under the law, he could have carried her for two hours and 40 minutes around in the car, all this time, and if a split second before the sexual intercourse occurred, she consented, he didn't forcibly and by force and violence have sexual intercourse with her.

The only evidence of force and violence that you have at all in this case is where he grabbed her by the arm,

I have not consciously said or done anything during this trial which might be considered by you as an indication of my opinion on any question or issue of fact. If, through inadvertence on my part, any of you may have received an impression to the contrary, I instruct you to disregard it, because it is your own opinion that must determine your verdict, and not mine.

You, the jury, are the sole and exclusive judges of the effect and value of the evidence, and of the credibility of the witnesses who have testified in this case. The character of the witnesses as shown by the evidence should be taken into consideration for the purpose of determining their credibility, whether or not they have spoken the truth. The jury may scrutinze the demeanor of witnesses while on the stand, and may consider their relation to [fol. 89] the case, if any, and also their degree of intelligence. A witness is presumed to speak the truth. This presumption however, may be repelled by the manner in which he testifies, by his interest in the case, if any, or his bias or prejudice, if any, for or against the defendant or the State, by the character of his testimony, or by contradictory evidence.

A witness may be impeached also by evidence that at other times he has made statements inconsistent with his present testimony as to any matter material to the cause on trial.

A witness wilfully false in one material part of his or her testimony may be distrusted in others. The jury may reject the whole of the testimony of a witness who has wilfully sworn falsely to a material point. If you are convinced that a witness has stated what was untrue as to a material fact not as a result of mistake or inadvertence, but wilfully, and with a design to deceive, then you may treat all of his or her testimony with distrust and suspicion and reject all, unless you shall be convinced that he or she has in other particulars, sworn to the truth.

On the subject of confessions, a statement made by a defendant outside of this trial which tends to prove his [fol. 90] guilt, may be either an admission or a confession. An admission is something less than a confession

and is but an acknowledgment of a fact which tends only toward proof of the ultimate fact of guilt.

On the other hand a confession by a defendant leaves nothing to be determined in that it is a declaration of intentional participation in the criminal act for which such defendant is on trial, and must be a statement of such in nature that no other evidence than the guilt of the defendant may be drawn therefrom.

If, under my instructions, you find that a voluntary confession was made, you are the exclusive judges as to whether or not the confession was true. The fact that the Court has admitted into evidence the alleged confession of this defendant, does not bind the jury to accept the Court's conclusion, and the jury, before it may take a confession into consideration, must for itself find whether or not it was a voluntary confession.

If the jury concludes that a confession was not made voluntarily, it is the duty of the jury to entirely disregard the same and not consider it for any purpose. This rule does not apply to a statement which does not amount to a [fol. 91] confession, but which merely amounts to an admission. An admission received in evidence may properly be considered by the jury even though it was made involuntarily.

A confession is involuntary when it is obtained by any sort of violence or threats, or by any direct or implied promises of immunity or benefit, or by any improper influence which might induce in the mind of the defendant, the belief or hope that he would gain or benefit or be better off by making a statement, and when the defendant makes such confession as a result of any such inducement originating with a law enforcement officer. But the fact that a defendant was under arrest at the time he made a confession or that he was not at the time represented by Counsel or that he was not told that any statement he might make could or would be used against him, in and of themselves, will not render such confession involuntary.

Where there is a conflict in the evidence, it is for the jury to decide whether the confession was made voluntarily or involuntarily, and in making this determination, the jury should govern its action by the same rules as

to weighing the evidence and credibtility of witnesses as applied to the determination of any of the issues in the case.

Now, the guilt of a defendant may not be established [fol. 92] alone by any confession or admission made by him outside of this trial. Before any person may be convicted of a criminal offense, there must be proof, independent of any such statement, that the crime in question was committed, but it is not necessary that such independent proof include proof as to identity of the person by whom such offense was committed.

There are certain rules applicable to every criminal trial which it is the duty of the jury to apply in this case in determining the questions of fact involved. These rules I will now define to you, and it is your duty to apply them in endeavoring to reach a conclusion in this case.

A defendant in a criminal prosecution is presumed to be innocent until the contrary is proved beyond a reasonable doubt. That presumption of innocence continues with the defendant throughout the trial until the jury, by their verdict, find him guilty, if they do arrive at such a verdict. The defendant is not called upon to establish his innocence. The burden of proving his guilt rests upon the prosecution throughout the case. He is entitled to the benefit of a reasonable doubt upon the whole case, upon all the evidence and lack of evidence in the case, and if [fol. 93] there be a reasonable doubt upon any material question necessary to his conviction, it must be resolved in his favor.

A reasonable doubt is not a mere whim or guess or imaginary doubt, nor is it a mere subterfuge to which resort may be had in order to avoid doing a disagreeable thing. It is such a doubt as reasonable men may entertain after a careful and honest review and consideration of all the evidence in the case. It must be founded in reason and common sense.

The rule of law to which I refer does not require that the defendant be proven guilty beyond all doubt, because in many cases that would be an impossibility. There is nothing human probably that can be said to be beyond all doubt. The law says that the defendant is entitled to the benefit of a reasonable doubt, not all doubt.

If, after going over in your minds the entire case and giving consideration to all the testimony and the evidence, you then feel uncertain and not fully convinced that the defendant is guilty, and believe you are acting in a reasonable manner, and if you believe that a reasonable man in any matter of like importance would hesitate to act because of such a doubt as you are conscious of having, [fol. 94] that is a reasonable doubt of which the defendant is entitled to have the benefit.

Now, Ladies and Gentlemen, the information in this case charges two counts, one of which is the crime of kidnapping, count 1, and briefly and in summary, the essential elements stated in this information are: That on the 3rd day of March, 1963, in this county, the defendant did wilfully, unlawfully and feloniously, seize, confine, abduct, conceal, kidnap, or carry away Patricia Ann Weir, for the purpose of raping her, and did rape her, the said Patricia Ann Weir not being related in any way to the defendant.

Now, the second count alleges the crime of rape in the first degree. Now, the essential elements of this crime as charged in the information are: That the said defendant did no or about the 3rd day of March, 1963 in this county, County of Maricopa, unlawfully and feloniously, and by force and violence, accomplished an act of sexual intercourse upon the female person of Patricia Ann Weir, who was not then the wife of the defendant, and that this was accomplished without her consent and against her will.

The Statutes of the State of Arizona in reference to the crime of kidnapping provide as follows: I will read only [fol. 95] the portions which are material to this case.

"A person except in the case of a minor by a parent who seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away, any individual by any means whatsoever with intent to hold or detain, or who holds or detains such individual for ransom, reward or otherwise, is guilty of kidnapping."

The Statute in respect to the second count which is rape in the first degree reads as follows:

"Rape in the first degree is an act of sexual intercourse accomplished with a female not the wife of the perpetrator under any of the following circumstances:"

Now, the Statute lists several separate circumstances following what I have just read. The Court has ruled that there is only one of these which under the information in this case is pertinent, and that is No. 2, and that reads as follows:

"Where the female resists, but her resistance is overcome by force or violence."

The essential guilt of rape in the first degree consists in the outrage to the person and feelings of the female, and any sexual penetration however slight is sufficient [fol. 96] to complete the crime.

Now, in order to constitute the crime of rape in the first degree by overcoming resistance by force and violence, it must appear that the victim has resisted to the utmost.

In every crime or public offense, there must exist a union or joint operation of conduct and intent. An essential element of the crime with which the defendant is accused is intent, the law requiring that to constitute such a crime, there must exist a criminal intent. However, this does not mean that one must intend all the consequences of his conduct, or that he must know that such conduct is unlawful.

The intent to do the forbidden thing constitutes the criminal intent. The law requires that to be guilty of crime, one must intend the conduct that fits the description of the crime, and must engage in that conduct knowingly and wilfully.

The intent with which an act is done is manifested by the circumstances attending the act, the manner in which it is done, and the means used.

In certain crimes, it is necessary that in addition to the intended act which characterizes the offense, the act must be accompanied by a specific or a particular intent, with- [fol. 97] out which such a crime may not be committed.

Thus, in the crime of kidnapping, a necessary element is the existence in the mind of the perpetrator of the specific intent to hold or detain.

As a matter of fact, there are two situations under this statute. There must be an intent to hold or detain, or the perpetrator must hold or detain such individuals for ransom, reward, or otherwise.

In arriving at a verdict in this case, the subject of penalty or punishment is not to be discussed or considered by you, as that matter is one that lies solely with the Court, and must not in any way affect your decision as to the innocence or guilt of the defendant.

If, after a careful consideration of all the evidence, and applying these instructions, you find beyond a reasonable doubt that the defendant, in the manner and at the time charged in the respective counts of the information, committed the acts charged therein, you should find him guilty. On the other hand, unless you so find beyond a reasonable doubt, you should find him not guilty. And this instruction applies to each separate count of the information.

You will be give four forms of verdict, Ladies and [fol. 98] Gentlemen.

MR. MOORE: If the Court please, may I approach the bench?

THE COURT: You may come right up.

(Thereupon a discussion was had at the bench between Counsel and the Court off the record after which proceedings resumed as follows before the jury.)

THE COURT: It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, whether or not he does testify rests entirely in his own decision. The failure of a defendant to deny or explain evidence against him does not create a presumption of guilt, or by itself warrant an inference of guilt, nor does it relieve the prosecution of its burden of proving every essential element of the crime and the guilt of the defendant beyond a reasonable doubt.

You will be given four forms of verdict, one of which reads as follows: "We, the jury, duly empaneled and sworn in the above entitled action upon our oaths, do find the defendant guilty of rape in the first degree as charged in Count No. 2 of the information."

The second reads as follows: "We the jury, duly empaneled and sworn in the above entitled action upon our [fol. 99] oaths, do find the defendant not guilty of rape in the first degree as charged in count 2 of the information."

Now, the third form reads: "We the jury, duly empaneled and sworn in the above entitled action upon our oaths, do find the defendant guilty of kidnapping as charged in count 1 of the information."

And the last form: "We the jury, duly empaneled and sworn in the above entitled action upon our oaths, do find the defendant not guilty of kidnapping as charged in count 1 of the information."

I notice I read count 2 first, but that is not material.

MR. MOORE: May the jury take the exhibit to the courtroom with them, Your Honor?

THE COURT: On retiring to your jury room, you will select one of your fellow jurors to act as Foreman who will preside over your deliberations, and who will sign the verdict to which you agree. In order to return a verdict, it is necessary that all twelve of the jurors agree to a decision, and as soon as all of you have agreed upon a verdict, have it signed by your Foreman and notify the bailiff who has you in charge, and you will be returned [fol. 100] to this room, and your verdict or verdicts will be delivered in open court.

You will be entitled to the exhibits which were introduced into evidence. There is just one. All right, you will be entitled to take that to the jury room.

Swear the bailiffs.

(Thereupon the bailiffs were sworn.)

THE COURT: You may now retire with the bailiffs.

(Thereupon the jury retires to deliberate of their verdict at 3:37 o'clock p.m.)

THE COURT: The Court will be in recess.

(Thereupon Court was recessed.)

[fol. 101]

[Court Reporter's Certificate (omitted in printing)]

[fol. 101A]

STATE'S EXHIBIT 1

CITY OF PHOENIX, ARIZONA
POLICE DEPARTMENT

Form 2000-66-D
Rev. Nov. 59

Witness/Suspect
Statement

SUBJECT: Rape D.R. 63-08380

STATEMENT OF: Ernest Arthur Miranda

TAKEN BY: C. Cooley #413—W. Young #182

DATE: 3-13-63 TIME: 1:30 P.M.

PLACE TAKEN: Interr Rm #2

I, Ernest A. Miranda, do hereby swear that I make this statement voluntarily and of my own free will, with no threats, coercion, or promises of immunity, and with full knowledge of my legal rights, understanding any statement I make may be used against me.

I, Ernest A. Miranda, am 23 years of age and have completed the 8th grade in school.

E.A.M. Seen a girl walking up street stopped a little ahead of her got out of car walked towards her grabbed her by the arm and asked to get in the car. Got in car without force tied hands & ankles. Drove away for a few miles. Stopped asked to take clothes off. Did not, asked me to take her back home. I started to take clothes off her without any force and with cooperation. Asked her to lay down and she did could not get penis into vagina got about ½ (half) inch in. Told her to get clothes back on. Drove her home. I couldn't say I was sorry for what I had done. But asked her to say a prayer for me. E.A.M.

I have read and understand the foregoing statement and hereby swear to its truthfulness.

/s/ Ernest A. Miranda

WITNESS: /s/ Carroll Cooley
/s/ Wilfred M. Young #182

[fol. 102]

IN THE SUPERIOR COURT
MARICOPA COUNTY, ARIZONA
Div- 10 Judge McFate
Criminal Case No. 41948

THE STATE OF ARIZONA, PLAINTIFF

vs.

ERNEST ARTHUR MIRANDA, DEFENDANT

JUDGMENT OF GUILT AND SENTENCE—June 27, 1963

On the 27th day of June, 1963, the hereinafter named defendant personally appeared before the court (with his attorney) Alvin Moore.

The State of Arizona was represented by (Deputy) County Attorney .....

The following proceedings were had:

The defendant was informed that he had heretofore (been tried and found guilty of) the offense specified in this judgment, which the defendant acknowledged to be correct. The following judgment of guilt was then entered in the presence of the defendant:

IT IS THE JUDGMENT of the court that the defendant Ernest Arthur Miranda is guilty of COUNT I—KIDNAPPING, AND COUNT II: RAPE (First Degree) Felonies as charged in the (Information).

The defendant was asked whether he had anything to say or any legal cause to show why sentence should not be pronounced. There was none.

IT IS THE JUDGMENT AND SENTENCE OF THE COURT, that as to Count I the defendant serve a term in the Arizona State Prison at Florence, Arizona, of not less than twenty (20) years nor more than Thirty (30) years; and that on Count II, that you serve a term in the Arizona State Prison, at Florence, Arizona, of not less than Twenty (20) years nor more than Thirty (30) years, said sentences on Counts I and II to run concurrently. Defendant is remanded to the Sheriff.

/s/ Yale McFate
Judge

[fol. 103]

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR MARICOPA COUNTY

No. 41948

[File Endorsement Omitted]

* * * *

NOTICE OF APPEAL—Filed August 2, 1963

TO THE CLERK OF THE SUPERIOR COURT:

NOTICE IS HEREBY GIVEN that the above named defendant appeals to the Supreme Court of the State of Arizona from the verdict, judgment and sentence, and all proceedings connected therewith, said judgment and sentence being entered and rendered by the above entitled Court on the 27th day of June, 1963, wherein the defendant was adjudged guilty of COUNT I, KIDNAPPING and COUNT II RAPE (FIRST DEGREE), felonies, and sentenced to serve a term in the Arizona State Penitentiary, and the whole of the procedure.

Dated this 2nd day of August, 1963.

/s/ Alvin Moore
ALVIN MOORE
Attorney for defendant
2125 West Monroe Street
Phoenix 9, Arizona

[Certificate of Service (Omitted in Printing)]

In State v. Jacobs, supra, we stated:

> "We therefore now hold that the crime of kidnapping with intent to commit rape may be charged under A.R.S. § 13-492, subd. A." 93 Ariz. at 341, 380 P.2d at 1002.

The history and reason for the broadening of the kidnapping statute was well set forth in the Jacobs case. The information properly referred to "rape" because that was the purpose of the kidnapping. The use of the words "and did rape" was no more inflammatory than the allegation "for the purpose of raping," which was necessary and proper, as held in Jacobs, supra. The commission of rape was charged in Count II, and so defendant could not have been prejudiced by the use of the word in Count I. The objection to the other language—namely, "not being related in any way to the defendant"—certainly is without foundation. The only object of the allegation was to show that the case did not fall within the exception, i.e., the taking of a minor by a parent. Under no stretch of the imagination could these words be construed as inflammatory, as contended by defendant.

As to the second part of the information charging the crime of rape, defendant contends that because originally the word "fear" was in the information it was prejudicial. However, defendant made a motion to quash the information, and, on May 2d, before the trial, the court entered an order denying defendant's motion to quash but ordered the word "fear" to be stricken from the information. Hence the information upon which defendant was tried [fol. 109] and which was read to the jury did not contain the word "fear." So the word "fear" originally in the information could not have had any prejudicial effect. The case was submitted under proper instructions defining rape under A.R.S. § 13-611, Para. 3, namely:

> "3. Where the female resists, but her resistance is overcome by force or violence." 5 A.R.S. 255

Defendant contends that it was error to deny his motion to dismiss the action on the ground that the case was

not brought to trial within the sixty days provided for under Rule of Criminal Procedure, No. 236, which reads:

> "When a person has been held to answer for an offense, if an information is not filed against him for the offense within thirty days thereafter, or when a person has been indicted or informed against for an offense, if he is not brought to trial for the offense within sixty days after the indictment has been found or the information filed, the prosecution shall be dismissed upon the application of such person, or of the county attorney, or on the motion of the court itself, unless good cause to the contrary is shown by affidavit, or unless the action has not proceeded to trial because of the defendant's consent or by his action. When good cause is shown, the action may be continued, in which event the defendant if bailable shall be released on bail either on his own recognizance or on the undertaking of sureties." 17 A.R.S. 456 (1956)

This contention is without merit, as defendant made application for a sanity hearing under Rules of Criminal Procedure, No. 250, 17 A.R.S. 468 (1956), just one week prior to the time of the original trial setting. The trial setting was well within the 60-day period. It was defendant's application for the sanity hearing which caused the delay. At the hearing on this application, and without objection of defendant's counsel, a new date for trial was set—June 10, 1963—which was also within the 60-day period. One of the medical reports was not filed until June 7, 1963. Defendant was thereafter promptly tried—[fol. 110] just two days after the ruling was made on the motion for the sanity hearing. Thus, it is evident that the delay of the trial was due to defendant's waiting until just one week before trial date to make his motion for the sanity hearing. This was good cause for continuance. Even with the delay occasioned by defendant's own action, trial was held June 20, 1963, only five days beyond the 60-day period. Where good cause is shown, under Rules of Criminal Procedure, No. 236, an action may be continued. Westover v. State, 66 Ariz. 145,

185 P.2d 315; Power v. State, 43 Ariz. 329, 30 P.2d 1059.

Defendant contends that there was prejudicial error committed by the deputy county attorney when he argued before the jury that the victim acquiesced in the act due to fear. Defendant contends that this argument, notwithstanding the court's instruction to disregard it, was so prejudicial and inflammatory as to deny defendant a fair and impartial trial. We cannot agree with defendant's interpretation. Certainly the testimony justified the county attorney's conclusion of fear. There was such testimony by the complaining witness as: "He had my hands behind my back, and one hand over my mouth, and stated pulling me toward the car"; "He tied my hands and my ankles, after he got out, he put this sharp thing to my neck and said 'Feel this' . . . I kept screaming 'Please let me go,' "; and when he was undressing her, she stated she was crying again and said "Please don't." This court has repeatedly held that attorneys are given a wide latitude in their arguments to the jury. State v. Dowthard, 92 Ariz. 44, 373 P.2d 357; State v. Thomas, 78 Ariz. 52, 275 P.2d 408; State v. McLain, 74 Ariz. 132, 245 P.2d [fol. 111] 278. In addition, any possible prejudice was corrected by the court's prompt instruction to discharged, coupled with the instructions given at the close of trial, viz., limiting the jury's consideration to the offense charged—Rape, A.R.S. § 13-611, Para. 3.

Defendant contends that the verdict is unsupported by the evidence, viz., there is no showing that the victim resisted the perpetration of the rape. This court cannot find merit in this contention. The victim testified that she pushed against defendant with her hands, and kept screaming; that she was trying to get away, and she testified that he was a lot stronger than she was, and she could not do anything. She also testified to penetration and defendant's confession showed penetration. These were questions for the jury, and the jury decided against defendant. We have repeatedly held that all inferences must be construed in the light most favorable to sustaining the verdict, and that where there is evidence to support a verdict we will not disturb a finding of a jury. State v. Hernandez, 96 Ariz. 28, 391 P.2d 586; State v. Maxwell, 95 Ariz. 396, 391 P.2d 560.

Defendant contends that admission into evidence of his written confession was error for the reason that he did not have an attorney at the time the statement was made and signed. The police officers Young and Cooley testified to oral statements made to them before the signing of the written confession. Their testimony was substantially the same. They first saw defendant at his home at 2525 West Maricopa on March 13, 1963, when they went there for the purpose of investigating a rape. They took defendant to the police station and placed him in a "line-up" with "four other Mexican males, all approxi- [fol. 112] mately the same age and height, build," and brought in the complaining witness who identified him as the one who had perpetrated the acts against her. Then they immediately interrogated him. They advised him of his rights. They testified that he made the statement of his own free will; and that there were no threats, or use of force and coercion, or promises of immunity; that they had informed him of his legal rights and that any statement he made might be used against him.

The oral statement by defendant, as related to police officers, is set forth in the testimony of Detective Carroll Cooley:

> "A He saw this girl walking on the street, he said, so he decided he would pull up ahead of her and stop. He stopped and got out of his car and opened the back door of his automobile. He said when the girl approached him he told her, he said, 'Don't make any noise, and get into the car,' and he said she got into the car, he said, in the back seat.
>
> "After getting into the car, he said he took a small rope he had inside the car and he tied her hands and her ankles, then he got into the front seat behind the driver's wheel and he drove to a location several miles from there in the northeast direction to the area of a desert.
>
> "Q Did he tell you what street this took place on?
>
> "A He didn't know the street. I asked him the street, and he didn't know the name of the street, he didn't know exactly where he was located when

he stopped. It was just in the desert area, couple of miles from where he picked the girl up.

"He said then when he got there he noticed that the girl was untied, and he got into the back seat and he asked her if she would, or he told her to take her clothes off and she said, 'No, would you please take me home?'

"He said then he took her clothes off for her. After he had undressed her, she began to cry, and started [fol. 113] begging him to not do this. She said she had never had any relations with a man before.

"He said he went ahead and performed the act of intercourse, and in so doing was only able to get about a half inch of his penis in and at which time he said he did reach a climax, but he didn't believe that he had reached a climax inside of her.

"He said after the act of intercourse, he then told her to get dressed and asked her where she lived and she told him in the area, she told him 10th or 12th Street. He couldn't remember where, so he said he drove her back to the area where he picked her up and dropped her off in that general area.

"When he started to let her out, why she told him, 'Well, this is not where I live.'

"He said, 'This is as far as I am taking you,' and then he asked her if she would pray for him. She got out of the car and he left and he said then he went home.

"Q Was that the essence of the conversation you had with him at that time?

"A That was the essence of the conversation.

"Q Officer, was this conversation reduced, or was the defendant's conversation with you reduced to writing?

"A Yes, Sir, it was.

"Q Who wrote it down, Officer?

"A He wrote his own statement down.

"Q He wrote it down?

"A Yes, Sir.

"Q Were you present, Officer, when he wrote this?

"A Yes, Sir, I was."

This oral statement was corroborated by the testimony of Officer Young. At the conclusion of Officer Cooley's testimony the statement of defendant was offered in evidence. Officer Cooley was examined on voir dire, as follows:

"Q Is this the statement that you said the defendant reduced to writing?

[fol. 114] "A Yes, Sir, it is.

"[Prosecuting Attorney]: At this time, State will move to introduce the exhibit in evidence.

"[Defense Attorney]: May I ask some questions on voir dire?

"THE COURT: Yes, you may.

"[Defense Attorney]: Q Officer Cooley, in the taking of this statement, what did you say to the defendant to get him to make this statement?

"A I asked the defendant if he would tell us, write the same story that he had just told me, and he said that he would.

"Q Did you warn him of his rights?

"A Yes, Sir, at the heading of the statement is a paragraph typed out, and I read this paragraph to him outloud.

"Q Did you read that to him outloud?

"A Yes, Sir.

"Q But did you ever, before or during your conversation or before taking this statement, did you ever advise the defendant he was entitled to the services of an attorney?

"A When I read—

"Q Before he made any statement?

"A When I read the statement right there.

"Q I don't see in the statement that it says where he is entitled to the advise of an attorney before he made it.

"A No, Sir.

"Q It is not in that statement?

"A It doesn't say anything about an attorney. Would you like for me to read it?

"Q No, it will be an exhibit if it is admitted and the jury can read it, but you didn't tell him he could have an attorney?"

The signed statement admitted in evidence is as follows:

[fol. 115] "I, Ernest A. Miranda, do hereby swear that I make this statement voluntarily and of my own free will, with no threats, coercion, or promises of immunity, and with full knowledge of my legal rights, understanding any statement I make may be used against me.

"I, Ernest A. Miranda, am 23 years of age and have completed the 8th grade in school.

"Seen a girl walking up street stopped a little ahead of her got out of car walked towards her grabbed her by the arm and asked to get in the car. Got in car without force tied hands & ankles. Drove away for a few miles. Stopped asked to take clothes off. Did not, asked me to take her back home. I started to take clothes off her without any force, and with cooperation. Asked her to lay down and she did. Could not get penis into vagina got about ½ (half) inch in. Told her to get clothes back on. Drove her home. I couldn't say I was sorry for what I had done. But asked her to say a prayer for me.

"I have read and understand the foregoing statement and hereby swear to its truthfulness.

/s/ Ernest A. Miranda

"WITNESS: /s/ Carroll Cooley
/s/ Wilfred M. Young, #182"

It will be noted that the only objection made to the testimony was in regard to the narrative form of the answers. The record shows the trial court did not err in the exercise of its discretion in the admission of this evidence.

The only objection made to the introduction of the signed statement was:

> "We are objecting because the Supreme Court of the United States says the man is entitled to an attorney at the time of his arrest."

No objection was made on the ground that the statement was not shown to be voluntary, and no request was made for a determination of the voluntariness of the confession outside of the presence of the jury.

[fol. 116] In State v. Owen, 96 Ariz. 274, 394 P.2d 206, after the Supreme Court of the United States (84 S.Ct. 1932) granted a petition for a writ of certiorari, judgment was vacated, and the case remanded for further proceedings not inconsistent with the opinion in Jackson v. Denno, 84 S.Ct. 1774, 378 U.S. 368, and, in accordance with the mandate of the U. S. Supreme Court, we held:

> "However, since the Supreme Court vacated the judgment of this Court [Jackson v. Denno, 84 S.Ct. 1774] we are of the opinion that it was intended that we follow the rule that statements or admissions, which have been induced by a method in violation of a defendant's constitutional rights, are subject to the same exclusionary rule as a confession. (Cases cited.)" 96 Ariz. at 276, 394 P.2d at 207.

In the instant case request was not made for a determination of the voluntariness of the testimony out of the presence of the jury, nor was its voluntariness questioned or evidence offered to prove it involuntary. No question was presented to the court—either from the evidence or by the attorney—suggesting that there should be a determination as to the voluntariness of the evidence, and no request was made therefor. Officers Cooley and Young had testified to substantially the same facts as were contained in the written statement without objection except to the form of the questions. In his appeal, defendant's

only contention is that he did not have an attorney. The evidence clearly shows that the statement was voluntary. The officers testified that there were no threats or use of any force or coercion, and no promise of immunity; that defendant was advised of his rights, and that any statement he made might be used against him. The record [fol. 117] in this case, and the companion robbery case, No. 1397, shows that defendant was identified, interrogated, and signed confessions in both cases in approximately two hours.

The procedure to be followed in regard to confessions is clearly set forth in State v. Owen, supra, where we held, in line with Jackson v. Denno, supra, that:

> ". . . when a question is raised as to voluntariness of a statement constituting either admissions against interest, exculpatory or otherwise, or a confession, it must be resolved by the judge outside the presence of the jury. If he determines it was involuntary, it will not be admitted. If he determines it was voluntary, it may be admitted." 96 Ariz. at 277, 394 P.2d at 208.

Counsel for defendant evidently determined that the statement was voluntary, or he would have made a request for a hearing out of the presence of the jury. There not having been an issue presented in regard to voluntariness —either from evidence or by request made for a hearing on its voluntariness—and a proper foundation having been laid for its introduction, there was no question to be determined by the court. The failure of the court to give such a hearing is not assigned as error in this case. The only question presented is whether it is proper to admit a statement voluntarily made where defendant did not have an attorney at the time he signed the statement.

The facts of Jackson v. Denno, supra, were different from those of the instant case. In that case there was a serious question in regard to whether the confession was voluntary, so the court laid down the rule which was followed by this court in the Owen case. We held that when requested there must first be a determination by the [fol. 118] court in the absence of the jury as to whether

a statement was voluntary. If it were involuntary, that ended the matter. If the court determined it to be voluntary, following the Massachusetts rule, we held it was still the duty of the court to submit the question again to the jury, and the jury might reject it on the grounds that it was involuntary.

The voluntariness and the truth of the confession were not denied. However, the defendant did not have an attorney at the time he made the confession. The sole question before the court, then, is whether there was a violation of the rights of defendant under the Sixth and Fourteenth Amendments to the Constitution by the admission of the voluntary statement made without an attorney.

We recognize that in passing upon constitutional provisions applicable to the instant case it is our duty to follow the interpretations of the Supreme Court of the United States. There is a long list of these cases, the most recent of which are Escobedo v. State of Illinois (1964) 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977; and Massiah v. United States (1964) 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246.

In Massiah, supra, the court held invalid a conviction on statements which were secured by placing a hidden radio microphone in a co-defendant's car so that government agents could pick up a conversation between defendants. Indictment already had been returned, and counsel retained by defendant. The Massiah case is not in point. The defendant in that case was not aware that his con- [fol. 119] versation was being picked up by the government agents, and he had not been put on notice that what he was saying might be used against him, nor did he know that the federal agents were eavesdropping on his conversation. Under these circumstances it was evident that he did not know his statement might be used against him, and the court held that such an incriminating statement was inadmissible.

In the Escobedo case, supra, defendant's brother-in-law had been fatally shot on January 19, 1960. Defendant had been arrested at 2:30 a.m. the next morning without a warrant and interrogated. He was released at 5:00 p.m.